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August 14, 1980

Mr. Laurence Ring
Law Offices - Suite 450
9665 Wilshire Boulevard
Beverly Hills, California 90212

Dear Mr. Ring:

Further reference is made to the claim for $1,000,000 which Mr. Harry Mercer filed with the Department under the Federal Tort Claims Act of 1949 and the Act of August 1, 1956 (22 U.S.C. 2669(f)) for damages allegedly sustained as a result of the death of Henry Mercer in Jonestown, Guyana, on November 18, 1978.

The claimant states that the nature and extent of the injuries which formed the basis of the claim were:

> "At said time and place, the decedent, Henry Mercer, and approximately 900 members of the 'Peoples' Temple' were induced and/or coerced to drink a liquid containing a poisonous and deadly substance commonly known as cyanide, which proved to be fatal."

The claimant has submitted no evidence establishing the amount claimed or the basis of the claim.

To determine the legal validity of the subject claim and other similar claims, the Department undertook to study the entire course of events relating to the shocking events surrounding the so-called Jonestown incident and specifically obtained statements from three officers of the Department involved in the matter.

In accordance with the provisions of the first paragraph of the Federal Tort Claims Act (28 U.S.C. 2672), the Secretary of State is authorized to consider and settle administratively tort claims arising as a consequence of the negligent or wrongful act or omission of any employee of the Department acting within the scope of his employment under circumstances where the United States, if a

private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. Section 2669(f) of Title 22 of the United States Code extends the tort claim authority of the Secretary to claims arising in foreign countries in connection with Department of State operations abroad.

The events and circumstances surrounding the Jonestown incident resulted in the deaths of over 900 people. In the Department's view this was a shocking, unprecedented and wholly unforeseen tragedy. Congressman Ryan, who undertook a fact-finding mission to Jonestown, and the Department believed that the Congressman's party might encounter difficulties in gaining permission to enter Jonestown, particularly if members of the concerned relatives group and representatives of the news media were included in the visit; however, no one believed that anyone would be physically attacked, let alone killed. The Department of State shared with Congressman Ryan all information available to it regarding the Jonestown community, including the reports of Embassy officials who visited Jonestown. The Congressman was accompanied on his visit to Jonestown by the Deputy Chief of Mission of the Embassy, who was seriously wounded in the attack. On the basis of available information, particularly prior visits to Jonestown by a large number of public officials and private citizens, there was no reasonable cause to anticipate the possibility of violence against the Congressman's party.

Regardless of the substantive merit, if any, of the claimant's allegations, the question of whether the alleged acts or omissions constituted a cause of action under the Acts must be determined by referring to the law of the place where the tort occurred (28 U.S.C. 2672, 22 U.S.C. 2669(f)). Since the conduct complained of occurred in Guyana, by the claimant's admission, claimant must show that the United States Government, if a private person, would be liable to the claimant in accordance with the laws of Guyana. He has not done so. In the absence of establishing such liability, the claim must be denied. (Richards v. U.S., 369 U.S. 1, 82 S. Ct. 585, 7 L ed. 2d 482 (1962); Rayonier, Inc. v. U.S., 352 U.S. 315, 77 S. Ct. 374, 7 L ed. 2d 354 (1957); Massachusetts Bonding Co. v. U.S., 352 U.S. 128, 77 S. Ct. 186, 1 L ed. 2d (1956).)

Regardless of the above-mentioned failure, a further question arises as to whether the circumstances of the case can give

rise to a valid claim under the Federal Tort Claims Act or the Act of August 1, 1956 (22 U.S.C. 2669(f)). It is the Department's conclusion that it cannot.

The basic precondition to the liability of the Department under the Act is that the claimant must establish a negligent or wrongful act or omission on the part of a Department of State employee who was acting within the scope of his employment at the time of the tort. The liability of the Department cannot be based simply on the fact that a death occurred. Mr. Mercer must show that a tortious act was committed by an employee of the Department and that the act occurred at the time and in respect of the very transaction out of which the loss occurred. The information transmitted with Mr. Mercer's claim does not establish, nor does it imply, any negligence on the part of the Department of State. The Department has no information relating to the negligence of employees of the Department concerning the matter. As a matter of fact, the conduct and actions of such employees were commendable.

The Department of State deeply regrets the losses suffered by Mr. Mercer and other victims involved in the Jonestown incident.

In the circumstances, the claim must be and is hereby denied.

The Federal Tort Claims Act provides for suit against the Government of the United States in the appropriate United States District Court for claims arising in the United States in the event the claimant does not concur with an administrative decision regarding such claim. Such suit must be filed not later than six months after the date an administrative determination is mailed. The Act does not provide for suit against the Government of the United States for claims arising outside the United States.

Sincerely yours,

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Fabian A. Kwiatek
Assistant Legal Adviser

cc: Mr. Harry Mercer
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